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Supreme Court of the United States.

No. 503.—October Term, 1903.

WILLIAM H. POPE, Plaintiff in Error,
vs.
JOHN M. C. WILLIAMS and JOHN W. HARPER, as the Board of Registry of Election District No. 7, of Montgomery County, Maryland, Defendants in Error.

In error to the Court of Appeals of the State of Maryland.

Reply Brief for Plaintiff in Error.

Premising that the brief for plaintiff in error seems not to have been before counsel for the defendants in error when composing their brief, I shall specially notice one or two contentions contained therein.

As to the claim that the writ of error should be dismissed, because the defendants in error have not control of the books of registry.

The statutory provision under which this proceeding was begun, contemplates that the defendants in error shall represent the State at all stages of a controversy like that at bar. It is provided (Ex. B, main brief):

"If the board of registry shall have returned the registers to the supervisors of elections, a certified copy of and such order granted by the court shall be delivered to said supervisors, who shall thereupon make the required correction upon the proper registers, and under the head of 'Remarks' note that the same was made under such order of the court."

The judgment of the Court of Appeals of Maryland has fixed the status of the plaintiff in error as not being that of a resident and citizen of Maryland, and unless this court affords relief, it is not open to the plaintiff in error hereafter to assail the validity of the statute whose enforcement has determined such status. Whether the duties of the defendants in error as officers of registration have ceased by operation of law or by their own volition, they must stand in judgment that a continuing wrong committed may be remedied. (*United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 307.) The cases of *Summerson* v. *Shilling*, (94 Md. 582, 591,) are not in point. The proceeding was an ordinary one in mandamus, and merely required the doing of acts whose nonperformance only affected the rights of the party as to the particular election.

"Civil" Rights.

Indirect criticism is made of the claim of plaintiff in error that the denial of the Federal right operated to deprive him of "civil" rights and privileges. The expression "civil" was plainly used in its broadest sense, and as embracing all personal rights, whether property, social or political rights. Mr. Justice Story and the Court of Appeals of Maryland recognize the appellation as proper. See excerpt made in brief for defendants in error at page 16 from the opinion of Cochran, J., in *Anderson* v. *Baker*, (23 Md. 578.) So, also, this court has, in effect, given the

same recognition to the use by me made of the term. (*Cummings* v. *Missouri*, 4 Wall. 321.)

Compliance with the act of March 29, 1902.

The statute lends no countenance to the construction that the personal attendance of the declarant at the county seat is not compulsory.

The main brief for the plaintiff in error fully meets the discussion on the merits contained in the opposition brief. But, for the convenience of the court, I briefly summarize my contentions as to the merits. They are:

1. "Resident" and "citizen" in the Maryland Constitution are synonymous. See authorities in main brief on page 11, and *Blake* v. *McClung*, (172 U. S. 247.)

2. The act of March 29, 1902, clearly imposes a CONDITION to the acquisition of the Federal privilege of State citizenship. (*Vance* v. *W. A. Vandercook Co.*, No. 1, 170 U. S. 438, 455; *Sinnot* v. *Davenport*, 22 How. 227, 241.)

3. If the statute could possibly be construed as an attempted exercise of the power to prescribe rules of proof, its requirements are offensive and unreasonably oppressive and discriminatory, and operate to abridge and deny the Federal right of State citizenship, and the statute is consequently invalid. See authorities and discussion in main brief, p. 18, *et seq.*, and *Connolly* v. *Union Sewer Pipe Co.*, (184 U. S. 540.) At page 558 of last cited case the court said (italicizing mine):

"But the question remains to be decided whether the statute is repugnant to the Constitution of the United States. If it be, then it is not law and cannot be applied for the purpose of defeating the plaintiff's claims in these actions.

"The question of constitutional law to which we have referred cannot be disposed of by saying that the statute in question may be referred to what are called the police powers of the State, which, as often stated by this court, were not included in the grants of power to the General Government, and therefore were reserved to the States when the Constitution was ordained. But as the Constitution of the United States is the supreme law of the land, anything in the Constitution or statutes of the States to the contrary notwithstanding, a statute of a State, even when avowedly enacted in the exercise of its police powers, must yield to that law. *No right granted or secured by the Constitution of the United States can be impaired or destroyed by a State enactment, whatever may be the source from which the power to pass such an enactment may have been derived.*"

4. It may also properly be decided that the statute by reason of its oppressively discriminatory features is repugnant to the second section of Article IV of the Constitution of the United States, declaring that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States. (*Blake* v. *McClung*, 127 U. S. 249, quoting from *Corfield* v. *Coryell*, 4 Wash. C. C. 371, 380.)

Respectfully submitted.

WM. H. POPE,
Plaintiff in error, pro se.